

1 Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
2 232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
3 Telephone: 415.388.0911

4 Attorneys for Plaintiff
SUSAN DAVIA
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 RIO GRANDE, INC., RICHLINE GROUP, INC.
AND DOES 1-150,

16 Defendants.
17

Case No. CIV2200689

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

(Cal. Health & Safety Code § 25249.6 et seq.)

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement”) is entered into by and between noticing party
4 Susan Davia (“Davia”) and noticed parties Rio Grande, Inc. and Richline Group, Inc. (hereafter,
5 collectively, “Rio Grande”), with Davia and Rio Grande each referred to as a “Party” and
6 collectively referred to as the “Parties.”

7 **1.2 Davia**

8 Davia is an individual residing in the State of California who seeks to promote awareness
9 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Rio Grande, Inc. and Richline Group, Inc.**

12 For the sole purpose of this Agreement and the resolution of the subject claims, and
13 without admitting any liability, neither Rio Grande, Inc. nor Richline Group, Inc. disputes that it is
14 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
15 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges, and Rio Grande denies, that Rio Grande is responsible for the manufacture,
18 distribution and/or sale, in the State of California, of certain craft pliers with vinyl grips that
19 exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and
20 reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a
21 carcinogen and reproductive toxin. Davia has also alleged, and Rio Grande denies, that Rio
22 Grande is responsible for the manufacture, distribution and/or sale, in the State of California, of
23 certain hand tools made with brass materials that exposed users to lead without first providing
24 “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, lead is listed as
25 a carcinogen and reproductive toxin. DEHP and lead shall be collectively referred to hereinafter
26 as the “Listed Chemical.”

27 **1.5 Notices of Violation**

28 Davia served Rio Grande and various public enforcement agencies with a document

1 entitled "60-Day Notice of Violation," dated April 16, 2021, that provided public enforcers and the
2 noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
3 warn consumers of the presence of DEHP in vinyl-grip plier products and the presence of lead in
4 brass craft tool products sold in California (AG Notice 2020-00884).

5 Davia also served Rio Grande and various public enforcement agencies with a separate
6 document entitled "60-Day Notice of Violation," also dated April 16, 2021, that provided public
7 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn consumers of the presence of lead in RinGenie brass gem tray products
9 sold in California (AG Notice 2021-00885).

10 These April 16, 2021 Notices of Violation from Davia to Rio Grande shall hereafter be
11 collectively referred to as "Notices." Each Party represents that, as of the date it executes this
12 Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65
13 enforcement action against Rio Grande related to DEHP or lead in the Covered Products (defined
14 hereafter), as identified in the Notices.

15 **1.6 Complaint**

16 On March 16, 2022, Davia filed a Complaint in the Superior Court of the State of California
17 for the County of Marin, Case No. CIV2200689, alleging violations by Defendants of Health and
18 Safety Code § 25249.6 based on the alleged exposures to lead and DEHP in the Covered Products.
19 (the "Action").

20 **1.7 No Admission**

21 This Agreement resolves claims that are denied and disputed by Rio Grande. The Parties
22 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
23 Parties for the purpose of avoiding prolonged litigation. Rio Grande denies the material factual
24 and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally
25 expose California consumers to the Listed Chemical and otherwise contends that all Covered
26 Products it has sold in California have been and are in compliance with all applicable laws and
27 regulations, including Proposition 65. Nothing in this Agreement shall be construed as an
28 admission by Rio Grande of any fact, finding, issue of law, or violation of law, nor shall

1 compliance with this Agreement constitute or be construed as an admission by Rio Grande of any
2 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rio
3 Grande. However, notwithstanding the foregoing, this section shall not diminish or otherwise
4 affect Rio Grande's obligations, responsibilities, and duties under this Agreement.

5 **1.8 Consent to Jurisdiction**

6 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
7 Court has jurisdiction over Rio Grande as to this Agreement, that venue for any action to enforce
8 this Agreement is proper in County of Marin and that this Agreement is made pursuant to Code
9 of Civil Procedure Section 664.6.

10 **2. DEFINITIONS**

11 **2.1** "Covered Product", when used without a "Lead" or "Phthalate" descriptor shall
12 mean both Lead Covered Product and Phthalate Covered Product, collectively. Covered Product
13 and Covered Products may be interchangeably used to refer to one or more items.

14 **2.2** "Phthalate Covered Product" shall mean all craft pliers with vinyl grips sold by
15 Rio Grande, including, but not limited to, flat nose pliers with brass jaw (Item 111070), German
16 flat nose plier (Item 111188), slim nylon flat nose plier (Item 111824) and slimline round nose plier
17 (Item 111902), which are not "Phthalate Free" Phthalate Covered Products.

18 **2.3** "Phthalate Free" Phthalate Covered Product shall mean any accessible
19 component of any Phthalate Covered Product that contains less than or equal to 1,000 parts per
20 million ("ppm") of, individually, DEHP, DINP, DBP, di-isodecyl phthalate ("DIDP"), di-n-hexyl
21 phthalate ("DnHP") or butyl benzyl phthalate ("BBP") as determined by a minimum of duplicate
22 quality controlled test results using Environmental Protection Agency ("EPA") testing
23 methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies
24 to determine the presence and measure the quantity of phthalates in solid substances. The 1,000
25 ppm standard is not cumulative, but applies to each individual listed phthalate.

26 **2.4** "Effective Date" shall mean thirty (30) days after this Agreement is fully
27 executed.

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1 **2.5** “Lead Covered Product” shall mean hand tools made with accessible brass
2 materials containing lead that are touched or deteriorate as a result of use and are sold by Rio
3 Grande including, but not limited to, brass pin vise (Item 113190) and RinGenie Brass Gem
4 Tray (Item 118374), which are not “Lead Free” Lead Covered Products.

5 **2.6** “Lead Free” Lead Covered Product shall mean any accessible brass component
6 of any Lead Covered Product that contains less than 100 parts per million (“ppm”) lead when
7 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
8 methodologies utilized by Federal or State agencies for the purpose of determining lead
9 content in a solid substance.

10 **3. INJUNCTIVE-TYPE RELIEF**

11 **3.1 Products No Longer in Rio Grande’s Control**

12 No later than the Effective Date, Rio Grande shall send a letter, electronic or otherwise
13 (“Notification Letter”) to any retail entity, if any, to which Rio Grande has sold at least 300 units
14 of Covered Products in a single order since January 1, 2018 and that Rio Grande reasonably
15 believes either maintains an ecommerce retail website or maintains retail outlets in California.
16 The Notification Letter shall advise the recipient that Covered Products “have been tested for the
17 presence of phthalates and found to contain DEHP, a chemical known to the State of California to
18 cause cancer and birth defects or other reproductive harm,” and request that the recipient either
19 pull all Covered Products from store displays and return its entire inventory of Covered Products
20 to Rio Grande or label the Covered Products remaining in inventory for sale in California with a
21 label that complies with Section 3.3. The Notification Letter shall request a response from the
22 recipient within 15 days, confirming that the letter was received. Rio Grande shall maintain
23 records of all correspondence or other communications generated pursuant to this Section for two
24 years after the Effective Date and shall promptly produce copies of such records upon Davia’s
25 written request.

26 **3.2 Product Reformulation Commitment**

27 **3.2.1** No later than the Effective Date, Rio Grande shall provide the Phthalate Free
28 concentration standard in Section 2 to its then-current vendors or manufacturers of any Phthalate

1 Covered Product and instruct such entities not to incorporate any raw or component materials
2 that do not meet the Phthalate Free concentration standard of Section 2 into any Phthalate
3 Covered Product or to supply any Phthalate Covered Product to Rio Grande that is not Phthalate
4 Free. Rio Grande shall maintain copies of all vendor correspondence relating to the Phthalate Free
5 concentration standards for two (2) years and shall produce such copies to Davia within fifteen
6 (15) days of receipt of written request from Davia. Davia agrees that such requests shall be
7 reasonable and will not be made more than once in 2022, and once annually thereafter, absent
8 good cause.

9 **3.2.2** No later than the Effective Date, Rio Grande shall provide the Lead Free
10 concentration standards in Section 2 to its then-current vendors or manufacturers of any Lead
11 Covered Product, and request such entities not to incorporate any raw or component materials
12 that do not meet the Lead Free concentration standards of Section 2 into any Lead Covered
13 Product or to supply any Lead Covered Product to Rio Grande that is not Lead Free. Rio Grande
14 shall maintain copies of all vendor correspondence relating to the lead concentration standards for
15 two (2) years and shall produce such copies to Davia within fifteen (15) days of receipt of written
16 request from Davia. Davia agrees that such requests shall be reasonable and will not be made
17 more than once in 2022, and once annually thereafter, absent good cause.

18 **3.2.3** After the Effective Date, Rio Grande shall provide the Phthalate Free concentration
19 standards in Section 2 to any new vendors or manufacturers of any Phthalate Covered Product
20 and instruct such entities not to incorporate any raw or component materials that do not meet the
21 Phthalate Free concentration standards of Section 2 into any Phthalate Covered Product. Prior to
22 purchase and acquisition of any Phthalate Covered Product from any new vendor, Rio Grande
23 shall obtain a written confirmation and accompanying laboratory test result from the new vendor
24 demonstrating compliance with the Phthalate Free concentration standard in all vinyl materials
25 comprising the Phthalate Covered Product. For every Phthalate Covered Product Rio Grande
26 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from
27 a new vendor after the Effective Date, Rio Grande shall maintain copies of all testing of such
28 products demonstrating compliance with this section, shall maintain copies of all vendor

1 correspondence relating to the Phthalate Free concentration standards for two (2) years from the
2 Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt
3 of written request from Davia. Davia agrees that such requests shall be reasonable and will not be
4 made more than once in 2022, and once annually thereafter, absent good cause.

5 **3.2.4** After the Effective Date, Rio Grande shall provide the Lead Free concentration
6 standards of Section 2 to any new vendors or manufacturers of any Lead Covered Product and
7 request such entities not to incorporate any raw or component materials that do not meet the Lead
8 Free concentration standards of Section 2 into any Lead Covered Product. Prior to purchase and
9 acquisition of any Lead Covered Product from any new vendor, Rio Grande shall require each
10 vendor of Lead Covered Product to provide Rio Grande with lead content testing results for each
11 brass component of a batch of exemplar product, demonstrating whether each such Lead Covered
12 Product meets the Lead Free standards of Section 2, and/or other written assurance of whether
13 the Lead Covered Product meets the Lead Free standard so that Rio Grande may determine
14 whether a Proposition 65 warning label should be provided. Rio Grande shall maintain copies of
15 all vendor correspondence relating to the Lead Free concentration standards for a period of two
16 (2) years and shall produce such copies to Davia within fifteen (15) business days of receipt of
17 written request from Davia. Davia agrees that such requests shall be reasonable and will not be
18 made more than once in 2022, and once annually thereafter, absent good cause.

19 **3.2.5** Subject to the provisions of Section 6 (Enforcement) below, as of six (6) months
20 after the Effective Date, Rio Grande shall not manufacture, cause to be manufactured, purchase or
21 otherwise obtain any Phthalate Covered Product unless such Phthalate Covered Product meets
22 the Phthalate Free concentration standards of this Agreement.

23 **3.2.6** Subject to the provisions of Section 6 (Enforcement) below, as of the Effective Date,
24 Rio Grande shall not manufacture, cause to be manufactured, purchase or otherwise obtain any
25 Lead Covered Product that is not Lead Free unless such is sold by Rio Grande with a compliant
26 Proposition 65 warning label.


27 **3.3 Interim Covered Product Warnings**


28 **3.3.1** For any Phthalate Covered Product sold in California by Rio Grande after the

1 Effective Date that is not confirmed to be Phthalate Free, Rio Grande shall not distribute, sell or
2 ship, or cause to be distributed, sold or shipped, any such Phthalate Covered Product unless it is
3 shipped with a label as set forth hereafter or a label that complies with OEHHA adopted “safe
4 harbor” provisions, as may be modified or amended over time.

5 Each such warning utilized by Rio Grande for any Phthalate Covered Product shall be
6 prominently placed either on the product, its labeling or its packaging with such conspicuousness
7 as compared with other words, statements, designs, or devices as to render it likely to be read and
8 understood by an ordinary individual under customary conditions *before* purchase or use.

9 Each warning shall either be printed on or affixed to the Phthalate Covered Product
10 packaging or shall be affixed to the product. If required, each warning shall include the yellow
11 triangle with an internal exclamation point and state:


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13  **CA WARNING:** This product can expose you to chemicals
14 including di(2-ethylhexyl)phthalate, which is
15 known to the State of California to cause cancer
16 and birth defects or other reproductive harm.
17 For more information go to
18 www.P65Warnings.ca.gov.
19 or

20  **CA WARNING:** Cancer and Reproductive Harm -
21 www.P65Warnings.ca.gov.

22 **3.3.2** For any Lead Covered Product sold in California by Rio Grande after the Effective
23 Date that is not confirmed to be Lead Free, Rio Grande shall not distribute, sell or ship, or cause to
24 be distributed, sold or shipped, any such Lead Covered Product unless it is shipped with a label
25 as set forth hereafter.

26 Each such warning utilized by Rio Grande for any Lead Covered Product shall be
27 prominently placed either on the product, its labeling or its packaging with such conspicuousness
28 as compared with other words, statements, designs, or devices as to render it likely to be read and
understood by an ordinary individual under customary conditions *before* purchase or use.

1 Each warning shall either be printed on or affixed to the Lead Covered Product packaging
2 or shall be affixed to the product. If required, each warning shall include the yellow triangle with
3 an internal exclamation point and state:


4
5  **CA WARNING:** This product can expose you
6 to chemicals, including lead, which is known to
7 the State of California to cause cancer and birth
8 defects or other reproductive harm. For more
9 information go to www.P65Warnings.ca.gov.

10 or

11  **CA WARNING:** Cancer and Reproductive
12 Harm - www.P65Warnings.ca.gov.

13 **3.4 Internet Ecommerce Covered Product Warnings**

14 A warning must be given in conjunction with the sale, or offer of sale, by Rio Grande of
15 any Covered Product not confirmed by Rio Grande to be Lead Free and Phthalate Free via any
16 ecommerce website owned, operated, managed or controlled by, or for the exclusive benefit of,
17 Rio Grande. A warning will satisfy this requirement if it appears either: (a) on the same web page
18 on which a Covered Product is displayed; (b) on the same web page as the order form for a
19 Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or
20 more web pages displayed to a purchaser during the checkout process. One of the following
21 warning statements shall be used and shall appear in any of the above instances adjacent to or
22 immediately following the display, description, or price of the Covered Product for which it is
23 given, or through a hyperlink using the word "WARNING", in the same type size or larger than
24 the Covered Product description text:

25  **CA WARNING:** This product can expose you to
26 chemicals including di(2-ethylhexyl)phthalate which is
27 known to the State of California to cause cancer and birth
28 defects or other reproductive harm. For more information
go to www.P65Warnings.ca.gov.

Alternatively, the following "short form" warning may be used on the ecommerce website, but

1 only if the same warning language also appears on the product label or consumer packaging of
2 the Covered Product itself.

3
4 **▲CA WARNING:** Cancer and Reproductive Harm -
5 www.P65Warnings.ca.gov.

6 **4. MONETARY PAYMENTS**

7 **4.1 Civil Penalty**

8 As a condition of settlement of all the claims referred to in this Agreement, Rio Grande
9 shall pay a total of \$3,600 in civil penalties in accordance with California Health & Safety Code §
10 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
11 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to
12 Davia.

13 **4.2 Augmentation of Penalty Payments**

14 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
15 upon Rio Grande for accurate, good faith reporting to Davia of the nature and amounts of
16 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and
17 presents evidence to counsel for Rio Grande that the Covered Products have been distributed in
18 California in sales volumes materially different than those identified by Rio Grande prior to
19 execution of this Agreement, and Rio Grande does not provide Davia with competent and
20 credible evidence to dispute this claim, then Rio Grande shall be liable for an additional penalty
21 amount of \$10,000.00. Davia agrees to provide counsel for Rio Grande with a written demand for
22 all such additional penalties and attorney fees under this Section. After service of such demand,
23 Rio Grande shall have thirty (30) days to either present evidence to counter this claim or to agree
24 to the amount of fees and penalties owing by Rio Grande and submit such payment to Davia in
25 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4.
26 Should this thirty (30) day period pass without any such resolution between the parties and
27 payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim
28 for the additional civil penalties pursuant to this Section and the prevailing party to such action

1 shall be entitled to all reasonable attorney fees and costs relating to such claim.

2 **4.3 Reimbursement of Davia’s Fees and Costs**

3 The Parties acknowledge that Davia and her counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
5 this fee issue to be resolved after the material terms of the agreement had been settled. The
6 Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5, for all work performed in this matter. Under
9 these legal principles, Rio Grande shall pay Davia’s counsel the amount of \$49,612.05 for all fees
10 and costs incurred investigating, litigating and enforcing this matter.

11 **4.4 Payment Procedures**

12 No later than fifteen (15) days after execution of this Agreement, Rio Grande shall deliver all
13 settlement payment funds required by this Agreement to its counsel. Within one (1) week of
14 receipt of the settlement funds, Rio Grande’s counsel shall confirm receipt in writing to plaintiff’s
15 counsel and, thereafter, hold Rio Grande’s settlement checks or payment(s) until such time as the
16 Court approves this settlement as contemplated by Section 7. Within five (5) business days of the
17 date plaintiff provides electronic mail notice to counsel for defendants that the Court has approved
18 this settlement, Rio Grande’s counsel shall deliver the settlement payments to plaintiff’s counsel as
19 follows:

20 a civil penalty check payable to “OEHHA” (Memo line “Prop 65 Penalties, 2021-00884, 2021-
21 00885”), in the amount of \$2,700;

22 a civil penalty check payable to “Susan Davia” (Memo line “Prop 65 Penalties, 2021-00884,
23 2021-00885”) in the amount of \$900; and

24 an attorney fee and cost reimbursement check payable to “Sheffer Law Firm” (Memo line
25 “2021-00884, 2021-00885”) in the amount of \$49,612.05.

26 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be
27 delivered to plaintiff’s counsel at the following address:

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1 Sheffer Law Firm
2 Attn: Proposition 65 Controller
3 232 E. Blithedale Avenue, Suite 210
4 Mill Valley, CA 94941

5 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
6 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that
7 section or as ordered by the Court:

8 Sheffer Law Firm
9 Attn: Proposition 65 Controller
10 232 E. Blithedale Avenue, Suite 210
11 Mill Valley, CA 94941

12 Rio Grande shall be liable for payment of interest, at a rate of 10% simple interest, for all
13 amounts due and owing from it under this Section that are not received by Sheffer Law Firm
14 within two business days of the due date for such payment.

15 **4.5 Issuance of 1099 Forms**

16 After this Agreement has been executed and the settlement funds have been transmitted to
17 Davia's counsel, Rio Grande shall issue three separate 1099 forms, as follows:

- 18 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box
19 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to
20 Sections 4.1 and 4.2;
- 21 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose
22 address and tax identification number shall be furnished upon execution of this
23 Agreement; and
- 24 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid
25 pursuant to Section 4.2 and 4.3.

26 **5. RELEASES**

27 **5.1 DAVIA'S RELEASE OF RIO GRANDE**

28 5.1.1 This Agreement is a full, final and binding resolution between Davia and
Rio Grande of any violation of Proposition 65 that was or could have been asserted by Davia,
individually and on behalf of herself and her past and current representatives, agents, attorneys,

1 successors and/or assigns (“Releasers”) against Rio Grande, Richline Group, Inc. and each of their
2 respective directors, officers, employees, attorneys, agents, parents, and subsidiaries,
3 predecessors, successors, and assigns (“Releasees”), based on their failure to warn about alleged
4 exposures to DEHP and lead contained in the Covered Products that were sold or offered for sale
5 by Rio Grande before the Effective Date. Compliance with the terms of this Agreement
6 constitutes compliance with Proposition 65 by Rio Grande with regard to the alleged or actual
7 failure to warn about potential exposure to lead or phthalates, including DEHP, from Covered
8 Products.

9 5.1.2 In further consideration of the promises and agreements herein contained,
10 and for so long as Rio Grande remains in compliance with the terms of this Agreement, Davia on
11 behalf of herself, her past and current representatives, agents, attorneys, successors and/or
12 assigns hereby waives all Davia’s rights to institute or participate in, directly or indirectly, any
13 form of legal action and releases all claims that Davia may have, including, without limitation, all
14 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
15 costs, fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert
16 fees, and attorneys’ fees, arising under Proposition 65 with respect to lead and phthalates,
17 including DEHP, in the Covered Products sold and/or offered for sale by Rio Grande, against Rio
18 Grande and Releasees.

19 5.1.3 Davia also, in her individual capacity and on behalf of her past and current
20 representatives, agents, attorneys, successors and/or assignees, provides a general release herein
21 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
22 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
23 demands of Davia, of any nature, character or kind, known or unknown, suspected or
24 unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured,
25 distributed or sold by Rio Grande or Releasees before the Effective Date. Davia acknowledges
26 that she is familiar with section 1542 of the California Civil Code, which provides as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 Davia’s releases shall not extend upstream to any entities that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to Rio Grande.

5.2 Rio Grande’s Release of Davia

Rio Grande, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products. Rio Grande acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

1
2 Rio Grande expressly waives and relinquishes any and all rights and benefits which it may
3 have under, or which may be conferred on it by the provisions of Section 1542 of the California
4 Civil Code as well as under any other state or federal statute or common law principle of similar
5 effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the
6 released matters. In furtherance of such intention, the release hereby given shall be and remain in
7 effect as a full and complete release notwithstanding the discovery or existence of any such
8 additional or different claims or facts arising out of the released matters.

9 **6. ENFORCEMENT**

10 Prior to bringing any motion, order to show cause, or other proceeding to enforce
11 Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any
12 Covered Product without a warning and which is alleged to not be Phthalate Free or Lead Free,
13 in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation
14 (“NOV”) to Rio Grande. The NOV shall include, for each Covered Product alleged to be
15 violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of
16 purchase (if relevant), and any and all test data requested or obtained by Davia or her
17 representatives regarding each such Covered Product. Davia shall take no further action
18 regarding any alleged violation nor seek any monetary recovery for herself, her agents, her
19 representatives, or her counsel if, within thirty (30) days of receiving such NOV, Rio Grande
20 demonstrates (1) that the Covered Product was manufactured distributed, sold or offered for
21 sale by Rio Grande within thirty (30) days after the Effective Date; or (2) that Rio Grande
22 directed the retailer or distributor of the Covered Product to either: a) promptly stop sale of the
23 Covered Product or, b) take corrective action by placing an appropriate warning on the Covered
24 Product compliant with Section 3.3 of this Agreement following service of the NOV; or (3) that
25 the Covered Product is Phthalate Free or Lead Free or, if a Lead Covered Product, it is sold with
26 a compliant Proposition 65 warning label.

27 **7. COURT APPROVAL**

28 If the Court does not approve this Agreement in its entirety, the Parties shall meet and

1 confer to determine whether to modify the terms of the Agreement and to resubmit it for
2 approval. In meeting and conferring, the Parties agree to negotiate in good faith to reach
3 agreement on any actions reasonably necessary to amend and/or modify this Agreement in order
4 to further the mutual intention of the Parties in entering into this Agreement. The Agreement
5 shall become null and void if, for any reason, it is not approved and entered by the Court, as it is
6 executed, within one year after it has been fully executed by all Parties. The Parties agree that,
7 upon Court approval, a Court judgment shall be entered on the terms of this Agreement.

8 **8. SEVERABILITY**

9 If any of the provisions of this Agreement are found by a court to be unenforceable, the
10 validity of the enforceable provisions remaining, after express agreement of the Parties, shall not
11 be adversely affected, unless the Court finds that any unenforceable provision is not severable
12 from the remainder of the Agreement.

13 **9. GOVERNING LAW**

14 The terms of this Agreement shall be governed by the laws of the State of California. In the
15 event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason
16 of law generally, or as to phthalates, lead and/or the Covered Products, then the Parties intend
17 that Rio Grande should benefit from any such applicable change, regardless of the agreements
18 herein. In such instance, Rio Grande may provide written notice to Davia of any asserted change
19 in the law and the Parties shall meet and confer about the effect of any such change. Thereafter, if
20 the Parties are unable to agree on the effect of such change, Rio Grande may seek redress in court.
21 Under any such circumstance, the terms and conditions of this Agreement shall continue until and
22 unless a court of competent jurisdiction relieves Rio Grande of its then future obligations under
23 this Agreement. No such repeal or preemption shall have any effect on obligations already
24 completed under this Agreement.

25 **10. NOTICES**

26 When any Party is entitled to receive any notice under this Agreement, the notice shall be
27 sent by certified mail or electronic mail to the following:

28 For Rio Grande:

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Arien Gessner, President
Rio Grande, Inc.
7500 Bluewater Rd NW
Albuquerque, NM 87121

With a copy to its counsel:

Malcolm Weiss and Jennifer MikoLevine
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@hunton.com
jmikolevine@hunton.com

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
gregs@sheffer-law.net

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Davia agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

12. MODIFICATION

This Agreement may be modified only by written agreement of the Parties.

13. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this

1 Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of
2 any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the
3 other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **14. ATTORNEYS' FEES**

5 **14.1** Should either Party prevail on any motion, application for order to show cause
6 or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its
7 reasonable attorneys' fees and costs incurred as a result of such motion, order or application,
8 consistent with C.C.P. §§ 1021 and 1021.5.

9 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own
10 costs and attorney's fees in connection with the Notice.

11 **14.3** Nothing in this Section shall preclude a Party from seeking an award of
12 sanctions pursuant to law.

13 **15. NEUTRAL CONSTRUCTION**

14 Both Parties and their counsel have participated in the preparation of this Agreement and
15 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
16 revision and modification by the Parties and has been accepted and approved as to its final form
17 by all Parties and their counsel.

18 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

19 This Agreement may be executed in counterparts and by facsimile or portable document
20 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
21 shall constitute one and the same document.

22 **17. TAX DOCUMENTATION**

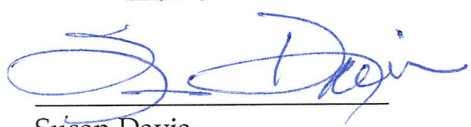
23 Davia agrees to provide IRS W-9 forms for Davia and the Sheffer Law Firm. Rio Grande
24 agrees to provide a completed IRS 1099 for its payments to, and, each of the payees under this
25 Settlement Agreement. The Parties acknowledge that Rio Grande cannot issue any settlement
26 payments pursuant to Section 4 above until after Rio Grande receives the requisite W-9 forms for
27 Davia and the Sheffer Law Firm from Davia's counsel.

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1 **18. AUTHORIZATION**

2 The undersigned are authorized to execute this Agreement on behalf of their respective
3 Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

4 **IT IS SO AGREED**

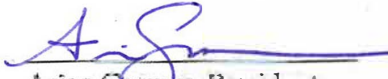

<p>5 Dated: _____, ____, 2022</p> <p>6 _____</p> <p>7 Arien Gessner, President</p> <p>8 Rio Grande, Inc.</p>	<p>9 Dated: <u>April</u>, 2022</p> <p>10 </p> <p>11 _____</p> <p>12 Susan Davia</p>
<p>13 Dated: _____, ____, 2022</p> <p>14 _____</p> <p>15 Dave Meleski, President and CEO</p> <p>16 Richline Group, Inc.</p>	

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1 **18. AUTHORIZATION**

2 The undersigned are authorized to execute this Agreement on behalf of their respective
3 Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

4 **IT IS SO AGREED**

<p>5 Dated: <u>4</u>, <u>6</u>, 2022</p> <p>6 </p> <p>7 Arien Gessner, President 8 Rio Grande, Inc.</p>	<p>9 Dated: _____, 2022</p> <p>10 _____</p> <p>11 Susan Davia</p>
<p>12 Dated: <u>March 31</u>, 2022</p> <p>13 </p> <p>14 Dave Meleski, President and CEO 15 Richline Group, Inc.</p>	

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